

REMARKS

Claim 15 has been amended. Claims 1-22 and 24-26 accordingly remain pending in the application. Reconsideration of the present case is earnestly requested in light of the following remarks.

Claim 15 stood rejected under U.S.C. 112, first paragraph, as failing to comply with the written description requirement, specifically for use of the term “tangible”, which was not included in the Specification. Applicant has amended claim 15 accordingly, removing this term, and respectfully submits that the resultant phrase “a computer-accessible storage medium” is statutory. Applicant thus respectfully requests removal of the section 112, first paragraph, rejection of claim 15.

Claims 15-20 and 26 stood rejected under U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully disagrees. The Office Action has misread Applicant’s Specification, paragraph [0025], which reads in pertinent part:

Generally speaking, a computer-accessible medium may include storage media or memory media such as magnetic or optical media, e.g., disk or CD-ROM included in storage system 10 as storage devices 30. A computer-accessible medium may also include volatile or non-volatile media such as RAM (e.g. SDRAM, DDR SDRAM, RDRAM, SRAM, etc.), ROM, etc., that may be included in some embodiments of storage system 10 as system memory 25. Further, a computer-accessible medium may include transmission media or signals such as electrical, electromagnetic, or digital signals, conveyed via a communication medium such as network and/or a wireless link, which may be included in some embodiments of storage system 10 as system interconnect 40.

The Office Action asserts that the computer-accessible storage medium is not limited to tangible media, since the Specification states that computer-accessible medium may include an electromagnetic signal, not in and of itself a tangible medium. Applicant respectfully notes that, as may be seen in the above text, the various types of computer-accessible medium discussed include 1) storage or memory media, e.g., magnetic or optical media, e.g., disk or CD-ROM, which are certainly tangible, 2) volatile or non-

volatile media, e.g., RAM (e.g. SDRAM, DDR SDRAM, RDRAM, SRAM, etc.), ROM, etc., which is tangible, and 3) transmission media or signals such as electrical, electromagnetic, or digital signals, which Applicant agrees are not tangible.

Thus, Applicant submits that, per the Specification, while a claim directed to “a computer-accessible medium” would certainly include the non-statutory “transmission media”, and would thus be non-statutory, a claim directed to 1) storage or memory media, e.g., magnetic or optical media, e.g., disk or CD-ROM, or 2) volatile or non-volatile media, e.g., RAM, would clearly be statutory. Thus, Applicant submits that claims 15-20 and 26, which are directed to a *computer-accessible storage medium* comprising computer-executable program instructions, are statutory. Applicant thus respectfully requests removal of the section 101 rejection of claims 15-20 and 26.

Claims 1-2, 8-9, 15-16, 21, 22, and 24-26 stood rejected under U.S.C. 103(a) as being unpatentable over Pudipeddi, et al in view of Howard and further in view of Patel, et al. Applicant respectfully traverses this rejection.

The Office Action admits that Pudipeddi fails to disclose **in response to detecting said operation, store a record of said operation within a respective one of said named streams corresponding to said first file, wherein said record includes a signature corresponding to said first file**, but asserts that Howard and Patel remedy this admitted deficiency of Pudipeddi, citing the Howard’s Abstract, Figure 5, col.3:25-50, and col.5:1-20, and Patel’s [0011].

Applicant respectfully notes that the cited portions of Howard, and Howard in general, makes no mention of streams at all, and more particularly, fails to disclose storing a record of an operation to modify an identity of a file within a stream corresponding to that file. Moreover, per these cited portions of Howard, the version entries that track file modifications are specifically described as being comprised in journals for respective sites, e.g., sets of directories in a computer system. In other words, in Howard, the version entries for all the files of a site or set of directories are stored in a single journal for that site or set of directories. Applicant respectfully submits

that this is quite different from storing records of operations modifying the identities of files in respective streams corresponding to each file.

Regarding Patel, cited [0011] reads thusly:

[0011] Operations that can be applied to a named data stream include (i) create, (ii) delete, (iii) read and (iv) write operations. Broadly stated, in the case of a create operation, the WAFL file system "opens" a base inode associated with the default named stream, if it exists. Otherwise, the file system creates the base inode by allocating a free inode and inserting the name of the base inode into an entry of a parent directory. Next, the hidden directory is created (if it does not exist) and the base inode is configured to reference that directory. Thereafter, the file system allocates another free inode and inserts the name of the stream into the hidden directory, thereby creating the named stream. Each created named stream, or the entire inode with the hidden directory and its named streams, can be deleted in accordance with a delete operation.

Applicant respectfully notes that the cited text of Patel mentions data streams that can be created, deleted, read from, and written to, but makes no mention of storing records of file identity modification operations in streams corresponding to the files; nor does Patel even hint at such a use of streams.

Applicant notes that it is impermissible to reconstruct the claimed invention from selected pieces of prior art absent some suggestion, teaching, or motivation in the prior art to do so; *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) (it is insufficient to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor); *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1556, 225 USPQ 26, 31 (Fed. Cir. 1985) (the prior art must suggest to one of ordinary skill in the art the desirability of the claimed combination).

Applicant respectfully submits that the Examiner has improperly selected only particular portions of Howard's system and omitted aspects that are contrary to the features of Applicant's claim 1, e.g., the fact that Howard's version entries for a file are stored in a site journal along with those of all the other files at that site, and has done so without any clear and particular motivation to do so from Howard. Applicant respectfully reminds the Examiner that if a proposed modification would render the prior art feature unsatisfactory for its intended purpose, then there is no suggestion or

motivation to make the proposed modification. In *re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). Applicant respectfully submits that since Howard is particularly directed to managing reconciliations between sites or sets of directories, and thus uses a site-specific journal to store records of file operations for all files in the site, modifying such file operations tracking to instead store such records in respective streams corresponding to each file would render Howard unsatisfactory for its intended purpose. Thus, Applicant submits that Howard and Pudipeddi are not properly combinable to make a prima facie case of obviousness.

Additionally, Applicant submits that proper motivations to combine have not been provided from the referenced art. For example, the motivation to combine Pudipeddi and Howard suggested by the Office Action is “since this feature allows the system the ability to effectively monitor and control the access the file system [sic]”. Applicant respectfully submits that this is but a statement of perceived utility of the alleged combination based on hindsight analysis in light of Applicant’s claim 1, which is improper.

Similarly, the motivation suggested by the Office Action to combine Pudipeddi, Howard, and Patel, specifically, “to store a record of said operation within a respective one of said named streams corresponding to said first file instead of storing records in a journal file since storing records of operations within a named stream of a file provides an effective way to monitor and review all operations occurring to a file. The system can retrieved [sic] access information about a file more efficiently from its named stream than processing the journal file for a creation/modification/deletion history for each file”.

Again, Applicant submits that the Examiner has simply observed a benefit of Applicant’s novel combination of features as represented by claim 1, and has assembled selected portions of the various references using Applicant’s claim 1 as a blueprint, absent particular and clear motivations to combine from the references themselves, which is improper. Moreover, as discussed above, modifying Howard “to store a record of said operation within a respective one of said named streams corresponding to said first file instead of storing records in a journal file” would render Howard’s system unsatisfactory for its intended use, and improperly omits this primary aspect of Howard from the alleged combination. Thus, Applicant submits that Pudipeddi, Howard, and Patel are not properly combinable to make a prima facie case of obviousness.

Moreover, even were Pudipeddi, Howard, and Patel properly combinable, which Applicant argues they are not, the resulting combination would still not teach Applicant's invention, as argued above.

Thus, applicant respectfully submits that Pudipeddi, Howard, and Patel, taken singly or in combination, fail to teach or suggest all the features and limitations of claim 1, and so claim 1 and those claims respectively therefrom are patentably distinct and non-obvious over the cited art, and are thus allowable.

Independent claims 8 and 15 include similar limitations as claim 1, and so the above arguments apply with equal force to these claims. Thus, for at least the reasons provided above, Applicant submits that claims 8 and 15, and those claims respectively dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

Regarding claim 21, Applicant submits that there are numerous features of claim 21 not disclosed by the cited art.

Claim 21 includes various limitations similar to those of claim 1, discussed above, and so Applicant submits that to the extent that these limitations are similar, the above arguments provided above with respect to claim 1, are also applicable to claim 21.

Additionally, the Office Action admits that Pudipeddi and Howard fail to disclose a file system configured to: **in response to detecting said identity-modifying file operation, store a record of said identity-modifying file operation within said respective named stream corresponding to said destination file, and for existing records of operations previously detected by said file system and responsively stored within said respective named streams corresponding to said one or more source files, store at least some of said existing records within said respective named stream corresponding to said destination file**, but asserts that Patel remedies this admitted deficiency of Pudipeddi and Howard, citing [0011].

Applicant respectfully submits that [0011], quoted above, mentions data streams that can be created, deleted, read from, and written to, but makes no mention of storing a record of a file identity modification operation *within a stream corresponding to a*

destination file; nor does Patel even hint at such use of a stream corresponding to a destination file.

More specifically, the cited text (or Patel in general) fails to disclose storing existing records of operations previously detected by the file system and responsively stored within respective named streams corresponding to one or more source files within the respective named stream corresponding to the destination file. Such copying or transferring of records of operations from streams corresponding to source files to a stream corresponding to a destination file are nowhere mentioned or hinted at in Patel.

Thus, Patel fails to teach or suggest this feature of claim 21.

As noted above, it is impermissible to reconstruct the claimed invention from selected pieces of prior art absent some suggestion, teaching, or motivation in the prior art to do so; *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) (it is insufficient to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor); *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1556, 225 USPQ 26, 31 (Fed. Cir. 1985) (the prior art must suggest to one of ordinary skill in the art the desirability of the claimed combination).

As with claim 1, discussed above, Applicant respectfully submits that the Examiner has improperly selected only particular portions of Howard's system and omitted aspects that are contrary to the features of Applicant's claim 21, e.g., the fact that Howard's version entries for a file are stored in a site journal along with those of all the other files at that site, and has done so without any clear and particular motivation to do so from Howard. As also discussed above with respect to claim 1, if a proposed modification would render the prior art feature unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In *re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). Applicant respectfully submits that since Howard is particularly directed to managing reconciliations between sites or sets of directories, and thus uses a site-specific journal to store records of file operations for all files in the site, modifying such file operations tracking to instead store such records in respective streams corresponding to each file would render Howard unsatisfactory for its

intended purpose. Thus, Applicant submits that Howard and Pudipeddi are not properly combinable to make a prima facie case of obviousness.

Additionally, Applicant submits that proper motivations to combine have not been provided from the referenced art. For example, regarding the motivation to combine Pudipeddi and Howard with respect to claim 21, the Office Action states that it would have been obvious “to store a record of said identity-modifying file operation within said respective named streams corresponding to said destination file, and for existing records of operations previously detected by said file system and responsively stored within said respective named streams corresponding to said one or more source files, store at least some of said existing records within said respective named stream corresponding to said destination file since storing records of operations within a named stream of a file-copying records from one named stream of one file to another named stream of another file provides an effective way to monitor all operations occurring to a file as well as track the relationship between files”. Similar to above, Applicant respectfully submits that this is but a statement of perceived utility of the alleged combination based on hindsight analysis in light of Applicant’s claim 21, which is improper. In other words, the Examiner has simply indicated the beneficial nature of Applicant’s claimed invention, and asserted that the usefulness thereof is what makes the claimed combination of features obvious, which is incorrect and improper.

Similarly, the motivation suggested by the Office Action to combine Pudipeddi, Howard, and Patel, specifically, “to store a record of said operation within a respective one of said named streams corresponding to said first file instead of storing records in a journal file since storing records of operations within a named stream of a file provides an effective way to monitor and review all operations occurring to a file. The system can retrieved [sic] access information about a file more efficiently from its named stream than processing the journal file for a creation/modification/deletion history for each file”, appears to be a recitation of the combination of features presented in claim 21, and a statement of its usefulness. In other words, as with claim 1, Applicant submits that the Examiner has simply observed a benefit of Applicant’s novel combination of features as represented by claim 21, and has assembled selected portions of the various references using Applicant’s claim 21 as a blueprint, absent particular and clear motivations to

combine from the references themselves, which is improper. Moreover, as discussed above, modifying Howard “to store a record of said operation within a respective one of said named streams corresponding to said first file instead of storing records in a journal file” would render Howard’s system unsatisfactory for its intended use, and improperly omits this primary aspect of Howard from the alleged combination. Thus, Applicant submits that Pudipeddi, Howard, and Patel are not properly combinable to make a prima facie case of obviousness.

Moreover, even were Pudipeddi, Howard, and Patel properly combinable, which Applicant argues they are not, the resulting combination would still not teach Applicant’s invention as expressed in claim 21, as argued above.

Thus, applicant respectfully submits that Pudipeddi, Howard, and Patel, taken singly or in combination, fail to teach or suggest all the features and limitations of claim 21, and so claim 21 and those claims respectively therefrom are patentably distinct and non-obvious over the cited art, and are thus allowable.

Claims 3-4, 10-11 and 17-18 stood rejected under U.S.C. 103(a) as being unpatentable over Pudipeddi, et al in view of Howard and in view of Patel, et al as applied to claims 1, 8, and 15 respectively above further in view of Santry, et al.

Claims 5-6, 12-13 and 19 stood rejected under U.S.C. 103(a) as being unpatentable over Pudipeddi, et al in view of Howard and in view of Patel, et al as applied to claims 1, 8, 15 respectively above, and further in view of Richard, et al.

Claims 7, 14 and 20 stood rejected under U.S.C. 103(a) as being unpatentable over Pudipeddi, et al in view of Howard and in view of Patel, et al as applied to claims 1, 8, 15 respectively above, further in view of Reynolds, et al.

Applicant respectfully traverses the above rejections of the dependent claims, at least for the reason that their respective base claims have been shown above to be patentably distinct and non-obvious, and thus allowable, and so these dependent claims are similarly patentably distinct and non-obvious, and thus allowable.

Removal of the section 103 rejections of the dependent claims is thus earnestly requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

In light of the foregoing amendments and remarks, Applicants submit that all pending claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

CONCLUSION

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-16300.

Respectfully submitted,

/Jeffrey C. Hood/

Jeffrey C. Hood

Reg. No. 35,198

ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin,
Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800

Date: March 30, 2007